UNITED STATES DISTRICT COURT DISTRICT OF SOUTH DAKOTA SOUTHERN DIVISION



CIV. 10-4044

BRET C. MERKLE,

Plaintiff. :

vs. : NOTICE AND PETITION FOR

REMOVAL

STATE FARM FIRE AND CASUALTY

COMPANY,

:

Defendant.

TO THE ABOVE-ENTITLED COURT:

Defendant State Farm Fire and Casualty Company hereby files this Notice of Removal of the above-described action to the United States District Court for the District of South Dakota, Southern Division, from the South Dakota Circuit Court, Second Judicial Circuit, Lincoln County, where the action will be filed, and states:

- 1. This action is a breach of contract and bad faith action and the United States District Court for the District of South Dakota has jurisdiction by reason of the diversity of citizenship of the parties.
- 2. On March 29, 2010, when the action was commenced, Defendant State Farm Fire and Casualty Company, was, and now is, a corporation organized, formed and incorporated in and under the laws of the State of Illinois, having its principal place of business in the State of Illinois.

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- 3. At all times, and on March 29, 2010, when the action was commenced in Lincoln County, Second Judicial Circuit, Plaintiff was, and now is, a resident of the State of South Dakota.
- 4. As to Plaintiff's claims against Defendant State Farm Fire and Casualty Company, the matter in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs.
- 5. There is diversity of citizenship between Plaintiff and Defendant and the basis for jurisdiction is 28 U.S.C. § 1332.
- 6. The South Dakota Division of Insurance purported to admit service on Defendant State Farm Fire and Casualty Company's behalf on March 29, 2010.
- 7. Attached to and filed with this notice are copies of the Summons,
 Complaint and Jury Trial Demand, which are the only process, pleadings, or orders
 served upon Defendant or on file in this matter.
- 8. With respect to the amount in controversy, Plaintiff's Complaint seeks damages for breach of contract and bad faith. Plaintiff seeks punitive damages as well as attorneys' fees from Defendant State Farm Fire and Casualty Company. The amount Plaintiff seeks to recover from Defendant State Farm Fire and Casualty Company exceeds Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs.
- 9. Defendant will give written notice of the filing of this notice as required by 28 U.S.C. § 1446(d).

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10. A copy of this notice will be filed with the Lincoln County Clerk of the South Dakota Circuit Court, Second Judicial Circuit, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant requests that this action proceed in this Court as an action properly removed to it.

Dated this 27th day of April, 2010.

FULLER & SABERS, LLP

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Attorneys for Defendant State Farm Fire and

Casualty Company

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April, 2010, by United States mail, postage prepaid, a true and correct copy of the foregoing Answer was served upon the following:

Bret C. Merkle, Esq., Pro Se Merkle Law Firm P.O. Box 90708 Sioux Falls, SD 57109

One of the attorneys for Defendant State Farm

Fire and Casualty Company